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CAPE OF GOOD HOPE
PARLIAMENT
HOUSE
SELECT COMMITTEE ON THE
SOUTH AFRICAN ASSOCIA-
TION BILL
REPORT



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CAPE OF GOOD HOPE.

REPORT

OF THE

SELECT COMMITTEE

ON THE

SOUTH AFRICAN ASSOCIATION BILL.

Printed by Order of the House of Assembly.

JUNE, 1906.

CAPE TOWN :

CAPE TIMES LIMITED, KEEROM STREET.

1906.



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1906.

ORDERS OF THE HOUSE.

7th June, 1906.

ORDERED :—That the *South African Association Bill* be referred to a Select Committee, the members to be appointed under Standing Rule and Order No. 358.

8th June, 1906.

ORDERED :—That the following members form the Select Committee on the *South African Association Bill*: Messrs. de Waal, Haarhoff, de Kock, Foster, Marais and Maasdorp; Mr. de Waal to be Chairman.

13th June, 1906.

ORDERED :—That the Petition of John Andrews and others, Public Accountants and Auditors, in opposition to the *South African Association Bill* be referred to the Committee.

ORDERED :—That the Committee do now meet as on an opposed Private Bill.

14th June, 1906.

ORDERED :—That Mr. Vosloo be a member of the Committee.

REPORT

OF THE

SELECT COMMITTEE appointed by Orders of the House of Assembly, dated the 7th, 8th and 14th June, 1906, on the *South African Association Bill*, consisting of Messrs. DE WAAL, HAARHOFF, DE KOCK, FOSTER, MARAIS, MAASDORP and VOSLOO.

Your Committee beg to report that they have taken evidence in proof of the Preamble of the Bill, and heard parties both for and against the same; they have considered the various Clauses of the Bill, making amendments in the same, which they now submit to the House.

The Petition in opposition to the Bill as originally presented has also been duly considered by your Committee.

N. F. DE WAAL,
Chairman.

Committee Rooms,
House of Assembly.
21st June, 1906.

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SCHEDULE OF AMENDMENTS

TO THE

South African Association Bill.

Clause Thirty-six.

In line 67 after "as" to omit "he may delegate" and insert "the Directors may appoint."

Clause Thirty-nine.

In line 38 after "for the" to omit "members" and insert "shareholders."

Clause Forty.

In line 56 after "Municipality" to insert "or."

Clause Forty-five.

In lines 37 and 38 after "year" to omit "; provided, however, that no person be eligible to be elected an auditor who is not either an incorporated or chartered accountant."

PROCEEDINGS OF COMMITTEE.

PROCEEDINGS OF THE SELECT COMMITTEE appointed by Orders of the House of Assembly, dated the 7th, 8th and 14th June, 1906, on the *South African Association Bill*, consisting of Messrs. DE WAAL, HAARHOFF, DE KOCK, FOSTER, MARAIS, MAASDORP and VOSLOO.

Wednesday, 20th June, 1906.

PRESENT :

Mr. DE WAAL (Chairman).

Mr. Haarhoff.

Mr. de Kock.

Mr. Foster.

Mr. Marais.

Mr. Maasdorp.

Clerk read Orders of the House, dated 7th and 8th June, appointing the Committee, and Mr. de Waal, Chairman.

Clerk read Order of the House, dated the 13th instant, referring to the Committee the Petition of John Andrew and others, Public Accountants and Auditors, in opposition to the Bill.

Clerk read a further Order of the House, dated the 13th instant, that the Committee do now meet as on an opposed Private Bill.

Clerk read Order of the House, dated the 14th instant, that Mr. Vosloo be a member of the Committee.

Clerk submitted the following declaration which was signed by the members of the Committee :—

We hereby declare that our constituents have no local interest and that we have no personal interest in the *South African Association Bill*; and that we will never vote on any question which may arise without having duly heard and attended to the evidence relating thereto.

J. W. DE KOCK.

JAMES A. FOSTER.

G. H. MAASDORP.

N. F. DE WAAL.

D. J. HAARHOFF.

J. H. MARAIS.

Mr. H. T. Standen, Parliamentary Agent, appeared on behalf of the Promoters of the Bill.

Mr. Walker (of the firm of Messrs. Walker and Jacobsohn, Parliamentary Agents) appeared on behalf of John Andrews and others, Petitioners in opposition to the Bill.

Clerk read the Petition of Alfred Ebdon, styling himself President of the Board of Directors of the South African Association, praying for leave to introduce a Bill to repeal Act No. 27, 1888, entitled "The South African Association Incorporation Act, 1888" and to substitute another Act in lieu thereof.

Clerk laid the Petition on the Table. [Appendix A.]
Clerk read the Petition of John Andrews and others, styling themselves Public Accountants and Auditors, in opposition to the Bill.
Clerk laid the Petition on the Table. [Appendix B.]
The Hon. Alfred Ebden, President of the South African Association, was examined by the Committee and (through the Chairman) by the Parliamentary Agents.
The Committee deliberated and adjourned until to-morrow at 11.30 a.m.

Thursday, 21st June, 1906.

PRESENT :

Mr. DE WAAL (Chairman).	
Mr. Haarhoff.	Mr. Marais.
Mr. de Kock.	Mr. Maasdorp.
Mr. Foster.	Mr. Vosloo.

Clerk submitted the following declaration which was signed by Mr. Vosloo.
I hereby declare that my constituents have no local interest and that I have no personal interest in the *South African Association Bill*; and that I will never vote on any question which may arise without having duly heard and attended to the evidence relating thereto.

J. A. VOSLOO.

Mr. H. T. Standen, Parliamentary Agent, appeared on behalf of the Promoters of the Bill.
Mr. Walker (of the firm of Messrs. Walker and Jacobsohn, Parliamentary Agents) appeared on behalf of John Andrews and others, Petitioners in opposition to the Bill.
Mr. Frederick James Centlivres, Director, South African Association, was examined by the Committee and (through the Chairman) by the Parliamentary Agents.
Mr. Wentzel Tichy, Secretary, South African Association, was examined by the Committee and (through the Chairman) by the Parliamentary Agents, and put in :—

Minutes of certain meetings of Shareholders and members held in connection with the introduction of the Bill.
[Appendix C.]

The Parliamentary Agents and witnesses having withdrawn, The Committee deliberated.
Resolved : That the Preamble stand part of the Bill.
The Parliamentary Agents and witnesses having been recalled, were acquainted with the decision of the Committee.
The Committee proceeded to consider the various clauses of the Bill.
Clauses One to Thirty-five put and agreed to.
On Clause Thirty-six,

Resolved : In line 67 after " as " to omit " he may delegate " and insert " the directors may appoint."

Clause, as amended, put and agreed to.

Clauses Thirty-seven and Thirty-eight put and agreed to.

On Clause Thirty-nine,

Resolved : In line 38 after " for the " to omit " members " and insert " shareholders."

Clause as amended put and agreed to.

On Clause Forty,

Resolved : In line 56 after " Municipality " to insert " or."

Clause, as amended, put and agreed to.

Clauses Forty-one to Forty-four put and agreed.

On Clause Forty-five,

Resolved : In lines 37 and 38 after " year " to omit " : provided, however, that no person shall be eligible to be elected an auditor who is not either an incorporated or chartered accountant."

Clause, as amended, put and agreed to.

Clauses Forty-six to Fifty-seven put and agreed to.

Schedule A put and agreed to.

Resolved : That the Chairman report the Bill with Amendments.

MINUTES OF EVIDENCE.

SELECT COMMITTEE ON THE SOUTH AFRICAN ASSOCIATION BILL.

Wednesday, 20th June, 1906.

PRESENT :

Mr. DE WAAL (Chairman).

Mr. Marais.

Mr. Foster.

Mr. Haarhoff.

Mr. de Kock.

Mr. Maasdorp.

Mr. Standen, Parliamentary Agent, appeared on behalf of the Promoters of the Bill.

Mr. Walker (of the firm of Messrs. Walker & Jacobsohn, Parliamentary Agents), appeared on behalf of John Andrews and others, Petitioners in opposition to the Bill.

The Honourable Alfred Ebdén, examined.

1. *Chairman.*] You are chairman of the South African Association for the Administration and Settlement of Estates?—I am president of the Association and have been so for the last 24 years.

2. *Mr. Standen* (through the Chairman)]. You say you have been connected with the Association for 24 years?—Yes, as a director for 24 years, and as a shareholder for 29 years.

3. In the course of carrying out of the business of the Association you found from time to time that the present Act was not as perfect as it might be, and that certain alterations were required in order to facilitate the carrying on of business?—That is so.

4. I will just take you shortly through the Preamble. We will take the first, to abolish the

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distinction between shareholders and members. I think under the present Act there are two sets of people who have an interest in the institution, that is, shareholders and members. Now a person can become a shareholder without becoming a member?—That is so.

5. The fact was that shareholders had to apply to the members at a meeting to be admitted as members. If they were not admitted as members they would not participate in the profits of the institution, but would simply get interest on the face value of the shares—£175 at 6 per cent. per annum—and would be liable for all the debts of the institution?—Yes. I may say that ever since I joined the company the distinction drawn between shareholders and members appeared to me to be utterly absurd. I do not suppose that the same distinction has existed in any other company, and we thought it was high time that the distinction should be abolished. So now, under the Bill, when a man becomes a shareholder, he becomes a member of the Association.

6. Well, the next thing is amalgamation with other companies. Under the present Act we have no power to do so or anything of that kind, and the directors considered it advisable that we should have power to do that?—That is so. The directors certainly thought it was desirable that they should be vested with such power.

7. Now we will take the third point, investment of monies?—It was found that the provisions of the old Act were vague, and all that will be done now will be to slightly alter them.

8. Now is it not vague under this Act as it is?—Yes. Well, we found that it would be very desirable to have that defined clearly.

9. Well, we will come to the next one, about the rate of interest under the old Act. The sixth section says that such association shall have the right of paying interest one per cent. less than the current rate. Now that current rate was a difficult question to follow?—Yes.

10. There was no current rate but several ?—Yes.

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A. Ebdén.

11. So now we are trying to take that vagueness out?—I think we suggested that the directors ought to have the right of establishing the rate of interest.

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12. And this is provided for under the seventh section of the new Act ?—Yes.

13. Well, then, the next one is about accepting monies on deposit. We have not any powers under the present Act to do so ?—I think that it is very desirable that the directors should have that power because without it they would lose a great deal of business.

14. And on investment, you require large powers to invest money and you find that you are rather restricted ?—Yes, we think large powers should be given on that point to the directors to enable them to carry on the business of the company satisfactorily.

15. And the next thing is the manner of disposing of shares. That was very unsatisfactory under the present Act. Under the present Act, if a man dies his shares have to be sent into the Board to be realized. Under the new clause they can be sold without going to the Board. It was a great hardship, and sometimes people had to pay double commission ?—It was found to be a great inconvenience.

16. I don't think that there is much to be said about the appointment of auditors. I believe that is, however, the main point of disagreement ?—With regard to that we feel very strongly that we ought to take care to have the best qualified men to be had. Hitherto under the old Act it would be quite possible for any number of shareholders to have brought forward as an auditor a man who was utterly incompetent for the work, and, to make sure of getting a duly qualified man, we considered it would be very desirable to state that any auditor appointed should be so far qualified as to be a chartered accountant or an incorporated accountant.

17. Mr. Ebdén, the directors having considered

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these matters called a meeting, in the usual course, of shareholders?—Yes.

18. There were several meetings held, were there not?—Yes.

19. Now as to the qualification of directors. It was found that the directors, at the time of the meeting of directors when the qualification of directors came up, that something was needed to modify the old qualifications. It was more for the purpose of giving a director a larger opportunity of being absent without being disqualified, as under the old Act if he were away for three months he was disqualified. Under the new Act the shareholders can give him extra time if they think it proper?—Yes.

20. Well, there is the question of the manner of service of notices. Under the old Act there is no provision made for the manner in which notices could be served on shareholders. Now all we have done is to put a clause in there directing the manner in which legal notice shall be given. That is so?—Yes.

21. Now the common seal. It was thought advisable sometimes to have a seal to give the documents a little more formality. I suppose that is the only reason?—Yes.

22. Well, then I will take you to the question of meetings. You presided at all the meetings when the Bill was put before the members?—Yes.

23. The Bill was fully discussed?—Yes.

24. And as it stands it has the full permission of the meeting?—Yes.

25. There was a committee appointed to deal with it?—Yes.

26. And the report of that committee was adopted?—Yes. [*Documents put in*].

26. *Mr. Walker* (through the Chairman).] Now, Mr. Ebdén, I suppose you will allow that if a man has a remedy outside Parliament he should not go to Parliament for one. That is, if he has it outside there is no need for him to come to Parliament?—Yes, I suppose it stands to reason.

28. Now at present your Act of incorporation, dated 1888 was passed before the present Companies' Act of 1892 came into operation?—Yes, I suppose so, according to the date.

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29. Have you considered the propriety of coming under that Act; has your Association considered it?—I do not think that it has come before it.

30. Are you acquainted with the provisions of the Companies' Act dealing with cases like your own?—Hardly, I cannot say without my memory being refreshed.

31. Has it not been brought to your notice that under section 4 your Company is entitled to come under that section, with or without limited liabilities?—I do not know.

32. At any rate it was not brought to your notice?—No.

33. Do I understand from you that you are ignorant of the provisions of the Companies' Act in so far as concerns an institution like yours coming under it?—Yes, quite. The matter never came before the notice of the Association as far as I can recollect.

34. Let me quote section 4 of that Act — “Subject to the provisions of part 6 hereof nothing in this Act contained shall apply to any joint stock company, partnership or association incorporated under its own special Ordinance or Act of Parliament, whether in existence at the date of the taking effect hereof, or formed at any future time. But any such company, partnership, or association may at any time hereafter register itself under this Act with limited or unlimited liability as may be provided by its Ordinance or Act of incorporation. And no such registration shall be invalid by reason that it has taken place with a view to the company, partnership or association being wound up. In the event of such registration the provisions of this Act shall apply, save in so far as they are inconsistent with the Ordinance or Act of incorporation aforesaid.” Then again section 7 says: “No company, partner-

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ship or association shall register under the 4th and 5th sections of this Act unless an assent to its so registering is given by a majority of such of its members as may be present personally, or by proxy in cases where proxies are allowed by the regulations of the company) at some general meeting duly summoned for the purpose." Might I ask you if a general meeting of your shareholders or members has been held with a view to considering the propriety of coming under the Companies' Act?—Not to my knowledge. I do not think that there has.

35. Now you are of course aware that under the Companies' Act, no addition to it would be necessary for such matters as referred to in your preamble. You wish for power to amalgamate with or acquire the business of other Companies or Institutions of a like nature; to define more fully the territories within which the said Association may carry on business and to empower it to continue; maintain and carry on an agency at Port Elizabeth, and to make provision for conducting the business thereat; to make fresh provision regarding the transfer of shares, and the disposing of certain shares, and regarding the appointment of auditors, of a general manager, and other officers; to regulate anew the disqualification of directors, the times of meeting of the shareholders and directors, and the manner of serving notices, and to provide for a common seal. Now, you will allow that such matters can be dealt with in the Articles of Association of the Company?———. It may be so.

36. But you will admit that all of the matter in the preamble, at any rate, four of your preamble clauses can be dealt with under Articles of Association?—It may be so, but I have no evidence to enable me off-hand to say so. Whatever that general Act may be there is nothing to prevent our directors applying to Parliament for rights to deal with their own particular business in their own particular manner without coming under the general Act.

37. At the same time you have the right of taking trust funds which may be deposited with you and investing them at the best rate possible?—The Hon.
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Yes, the Act says so.

38. And you have the right to put the difference in your pocket between the amount obtained and the amount of the Master?—The Act says so.

39. But I would ask you again; you are Chairman of the Company?—The Act speaks for itself.

40. Here's the Companies' Act. Now, I would like to ask you a question which I was putting to you. Your Association has the right to invest trust funds and put the difference in interest in its pocket between the Master's rate and the rate received. Is that not so?—I do not know.

41. Why do you beat about the bush, you are the Chairman?—[No answer.]

42. Now, you have the right under the present Act, Mr. Ebdén, to advance funds on promissory notes secured by shares in Colonial companies what other people and other companies may have. We merely ask for certain powers for ourselves.

43. But you must have known that executors have not that power at law. You have not got the power by law to do so at present?—The thing speaks for itself. If we did not wish for the power we should not ask for it.

44. Do you wish to advance funds on joint stock companies?—The Act speaks for itself.

45. You had not this power I suppose?—You had better refer to the Act.

46. If this Bill be repealed it would bring the old Bill, *de novo*, into operation?—

47. *Chairman.*] You ask this question: Whether the power now asked does not exceed the old powers? That is a fair question which you should answer, Mr. Ebdén. You are not seeking additional powers?—Yes, if we had the power under the old Act, I presume, we should not ask for them under this new one. It speaks for itself.

48. *Mr. Walker* (through the Chairman).] When you get them you will alone possess them in the

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Colony?—I do not know about that: others may have. It does not concern us at all. We merely confine ourselves to our own business under our own Act.

49. What do you mean by incorporated or chartered accountant? Are you able to speak on that subject?—Of course, there are incorporated accountants in England and a number of men have become incorporated accountants in this Colony, and it would therefore be quite intelligible what we mean by an incorporated accountant. It is a man who has been recognized as a public accountant in this Colony. There is a company at home which has an agency here and immense numbers of men have become incorporated here, which, of course, is a qualification in itself.

50. Now what particular body of accountants had you in view?—No particular body, only competent men. The only object we have in stipulating for incorporated accountants is to ensure our having properly qualified men to act as our auditors.

51. Then no man would be qualified to act for you unless he is a qualified member of the English body?—You refer to the Act.

52. Do you mean to say that no man will be employed unless he is a member of the English incorporation?—There are incorporated men in this Colony.

53. What do you mean by “members of English bodies”?—No, I understand that there are a great number of men who have become incorporated accountants in this Colony, which is evidence that they are qualified to deal with such questions. What we ask for, is that no man shall be entitled to act as auditor for our Company unless he is an incorporated accountant. It speaks for itself.

54. Well, what do you mean, Mr. Ebdén, by an incorporated accountant?—There is now a company incorporated in this Colony which gives men the qualifications on an examination or in any other way, and they call themselves incorporated accountants.

55. *Mr. Walker* (through the Chairman).] Is there such an incorporation in this Colony?—Yes, because a number of men sign themselves as such. The late Secretary of the South African Association was the man who first raised the question of incorporated accountants in this Colony.

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56. How were they incorporated. The incorporation could only take place by charter or Act of Parliament or by forming the Society into a joint stock company. Are they incorporated by charter, Act of Parliament, or what?—

57. *Chairman*.] Could we not get at it quicker if we asked if they are chartered in this Colony or in England?—The men referred to have become incorporated in this Colony.

58. By Act of Parliament?—No, by voluntary arrangement.

59. *Mr. Walker*.] Then they are not an incorporation?—If you mean an incorporation established by Parliament, they are not.

60. They are not incorporated as a joint stock company?—No.

62. *Chairman*.] The Association although it can come under the Act of 1892, the Association prefers to have an Act of its own?—Undoubtedly.

63. You have got an Act of your own, and all you are asking is to have it amended in order to get additional powers or facilities, the reason for which you state in this preamble?—Yes.

64. Now, I want to ask you a question about auditors. Your books have been audited in the past by auditors who have been elected by members of the Association. Now these auditors which you have had in the past, they have not been incorporated or chartered accountants?—Well, I do not know that they have.

65. But your Company is a very old one running to 50 years back, but this royal charter is new, well, only 25 years old. For very many years have been audited by people not of the class which you now seek to have?—Apparently so.

66. Did they give satisfaction?—No objection seems ever to have been made.

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67. Did they give satisfaction?—I suppose so.

68. You never had any complaint?—No; we merely want to take precautions.

69. What causes you to wish for this departure from the open way of allowing anyone so disposed to audit your books, and to prevent them auditing your books?—We think it advisable to ensure the appointment of qualified men as auditors.

70. Don't you think the general sense of shareholders would secure it?—Well, it does not follow. It is quite possible if any man were allowed to be on it, that some men could be appointed who were not fit for the office, and who do not possess the necessary qualifications.

71. So it is only on that fear?—Yes.

72. *Mr. Haarhoff.*] A precautionary measure?—Yes.

73. *Chairman.*] Have you any reason to believe that people designated as chartered or incorporated accountants are better qualified than other accountants in this Colony, except from hearsay?—It follows that the man thoroughly acquainted with accounts is much better to be the auditor than the man who is not.

74. But you are aware that there is a variety of Associations. Why do you pick these two out? One man's description is "Member of the Institute of Chartered Public Accountants of England." Surely it is a long enough title?—Such a man would not be objected to as an auditor.

75. But he would be left out under your present powers?—I do not think so.

76. Yes, and there is another who is a member of the Incorporated Accountants of Glasgow. Would he be excluded?—I do not think so; section 45 is very wide. It does not say what society he shall belong to.

77. *Chairman.*] Now, if this clause was construed that only two classes of accountants could be eligible, Mr. Ebden,—the man under the English Charter, or the man under the English Incorporation Act—assuming that to be the case, you would con-

sider it was not your idea of what the clause meant? —Well, I do not know. My idea is that if a man is a member of the Incorporated Society at home, that if he comes out here he would be eligible to act as an auditor.

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A. Ebdon.

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78. Now is it not so that the man must be under the English charter?—No, the Colonial.

79. Is there a Colonial one?—Well, I understand there is.

80. Now, let me put it straight to you: would it not exclude South Africans and only open it to Englishmen?—No, I do not think that it would.

81. *Mr. Haarhoff.*] No, it would not. I do not know whether it is fair to ask you the question as to whether you can give us an idea of the number of men so qualified in Cape Town, or its immediate surroundings, to act as auditors?—I have heard of a great number, but I cannot tell you. I trust Mr. Standen will be able to tell us.

82. *Mr. de Kock.*] Have you the means of giving us shortly the difference between the old Act and the present one submitted for the purpose of becoming law?—I do not understand the question.

83. I see that under the old Act, section 45, it is provided that the auditor must be a member of the Association?—Yes, oh yes.

84. So that the scope of the auditor will be extended now?—Under the old Act the auditorship was confined to members. No man not a shareholder could be an auditor.

85. So you are moving with the times in making it open?—Yes.

86. Do you know the general Companies' Act of 1892?—I have just heard of it.

87. Are you aware under that Act that there is a schedule called "Articles of Association"?—I do not know.

Thursday, 21st June, 1906.

PRESENT :

Mr. DE WAAL (Chairman).

Mr. Marais.

Mr. Foster.

Mr. Haarhoff.

Mr. de Kock.

Mr. Vosloo.

Mr. Maasdrorp.

Mr. Frederick James Centlivres, examined.

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Centlivres.

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88. *Chairman.*] Are you a director of the Association?—Yes.

89. *Mr. Standen* (through the Chairman).] You have prepared certain statement showing in what respects we would like the old Act to be amended?—Yes.

90. Will you read it —Yes.

Bill to Repeal Act No. 27, 1888, entitled “The South African Association Incorporation Act, 1888,” and to substitute another Act in lieu thereof.

PREAMBLE.

1. As provided in the existing Act, a person may become a shareholder and be refused admittance as a member. In which latter case he would not benefit in profits, but still be liable for the debts of the Association. It is now sought to do away with this anomaly and to admit a shareholder to the full benefits and on an equal footing, in every respect, with existing shareholders.
2. There are several institutions in Cape Town kindred to that of the Association. Amalgamation—one with the other—has several times been mooted, although perhaps not formally discussed. It is felt that under the existing Act of the Association it would be useless to consider amalgamation, and shareholders are desirous to fortify themselves with powers in this respect in the same way as any other Joint Stock Company at present has the right

of amalgamation under the Companies' Act of 1892, provided they frame or amend their Articles of Association to meet such contingency.

Mr. F. J.
Centlivres.

June 21, 1906.

3. Under the existing Act the Association is authorized to carry on its business in Cape Colony, or such other territories in South Africa as shall be decided upon by its members. The proposed Bill limits the scope of operations to *British* Colonies, Possessions, or Territories in South Africa; and further empowers the Association to continue, maintain, and carry on an agency at Port Elizabeth. In regard to the last mentioned provision there is no special power authorized in the existing Act. The powers already enjoyed, as well as that concerning the Port Elizabeth agency, are no more than what any Joint Stock Company is entitled to under the Companies' Act of 1892—either under existing or amended Articles of Association. No exclusive powers of whatever nature are asked for. Under the laws of this Colony any firm, partnership, or Joint Stock Company is at liberty to take such powers if not already possessed. Amended Articles of Association are provided for under the Companies' Act of 1892, and it is open to any Company to extend its field of operations. Some Companies, such as the South African Mutual Life Assurance Society, with a special Act of Incorporation, carry on large businesses in investing money in Orange River Colony and Transvaal. The South African Association does likewise under its existing Act.
4. The existing Act provides for the payment of interest on moneys administered by the Association as executors, administrators, guardians, or curators, at one per cent. less than the current rate received by the Association. What is meant by the "current rate" is a question which has baffled not only accountants, but also lawyers. The Association has investments

Mr. F. J.
Centlivres.
—
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ranging from $3\frac{1}{2}$ to 6 per cent. per annum, and at times has large sums of money—from £30,000 to £40,000 and upwards lying idle. Is the intention that the current rate be arrived at by calculating the rate earned on the total pounds? Owing to the ambiguity in this respect it is now desired to give the Directors the power to fix the rate of interest—from time to time—provided that the rate so fixed shall not be less than that allowed by the Master of the Supreme Court of this Colony. The proposed alteration is merely to make the matter more definite, and then persons leaving trust moneys in the hands of the Association would know exactly what the conditions are. With reference to the manner in which such moneys or capital sums shall be invested no greater powers are asked for than those contained in the existing Act.

5. The existing Act makes it compulsory for an Executor or Trustee of a deceased or insolvent shareholder to hand the share over to the Directors for disposal, subject to a deduction for commission. The proposed amendment will enable the Executor or Trustee to sell such share—without paying any commission to the Association—in the open market, provided he does so within three months from the time of death or insolvency. In regard to appointments of a General Manager, other Officers, and Auditors, see remarks below on Clauses 45 and 46 of the Bill.
6. Under the present Act a Director's seat becomes vacant if he absents himself from the meetings of Directors for three months without leave. The proposed amendment merely extends the period to four. Clause 28 of the existing Act makes it compulsory for a Director to reside within ten miles of Cape Town. The proposed amendment (Clause 30) extends the radius too twenty-five miles. In other respects nothing more is asked for than already allowed,

with exception of Clause 54 of the proposed Bill, which defines the mode of serving notices on shareholders.

Mr. F. J.
Centlivres.
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THE AMENDMENTS.

The principal alterations or amendments of the existing Act are contained in Clauses 4, 7, 8, 9, 10, 18, 19, 20, 21, 22, 26, 30, 35, 43, 45, 46, 49, 54, and 55.

Clause 4.—This limits the operations of the Association to British Colonies or Territories in South Africa, and empowers the Association to continue and carry on its Port Elizabeth Agency. See Clause 3 of the existing Act.

Clause 7.—Empowers Directors to fix the rate of interest on moneys administered as executors, etc., provided that it be not less than the rate allowed by the Master of the Supreme Court. See Clause 6 of the existing Act.

Clause 8.—The only alteration is in regard to the rate of interest provided for in Clause 7, as above mentioned. See Clause 7 of the existing Act.

Clause 9, inter alia, stipulates that advances made against pledges of mortgage bonds shall not exceed two-thirds of the value of the landed property hypothecated under such mortgage bonds; and it limits the scope of operations to British Colonies. See Clause 8 of the existing Act.

Clause 10.—Empowers Directors to accept moneys on either fixed or floating deposits with the Association from persons so desirous of depositing the same; and to pay interest thereon. This power does not exist at present, but is very necessary for clients who have money for investments without being able immediately to secure suitable investments. This addition to the existing powers would enable Directors to pay interest on such moneys until suitable investments—to the satisfaction of clients—be forthcoming.

Mr. F. J.
Centlivres.
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Clause 18.—Refers to the sale and transfer of shares in the Association; and provides that Directors, before approving of any transfer, shall give a notice of ten days to existing shareholders. See Clause 16 of the existing Act.

Clause 19.—Refers to the disposal of shares belonging to insolvent or assigned estates, etc., and gives the Trustees or Assignees the power to sell—within three months—instead of at once handing up the shares to Directors for disposal as at present provided for. See Clause 17 of the existing Act.

Clause 20.—Makes provision similar to that in the last preceding Clause for the disposal of shares belonging to deceased estates. See Clause 18 of the existing Act.

Clause 21.—This is in lieu of sub-section of Clause 16 in the existing Act, which exonerates a shareholder, after his share has been sold and duly transferred, from all liability, claim, or demand in regard to debts owing by the Association. See sub-section of Clause 16 of the existing Act.

Clause 22.—Stipulates that general meetings of shareholders shall be held in the months of January, April, July, and October, instead of on the last Monday in said months, as at present provided. See Clause 20 of the existing Act.

Clause 26.—Fixes the number of shareholders necessary at a meeting to form a quorum; how questions shall be decided; and how a poll may be demanded and how to be taken. See Clause 24 of the existing Act.

Clause 30.—Extends from ten to 25 miles the distance from Cape Town within which a Director shall reside to be qualified as such. See Clause No. 30 of the existing Act.

Clause 35.—Stipulates that Directors shall meet once in each week and oftener, if necessary, instead of twice a week, as at present provided. See Clause 34 of the existing Act.

Clause 40.—The only alteration is in regard to limiting the scope of operations to British Colonies and Territories in South Africa. See Clause 39 of the existing Act.

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Clause 43.—Provides for a certain portion of the profits to be carried to a Reserve Fund so long as the said Fund shall be less than £100,000, and for the division of the profits. See Clause No. 42 of the existing Act.

Clause 45.—See Clause 45 of the existing Act—qualification of Auditors. Under the existing Act the election of Auditors is limited to shareholders (members), and irrespective of ability for such office. It is now proposed to elect from a wider field—from the shareholders, as well as from outside of shareholders—but to require the qualification of Incorporated or Chartered Accountant. It is felt that the appointment of Auditors with credentials or certificates, as such, will give greater confidence to shareholders and clients generally, but more especially to those residing in England, where it is customary for accounts to be audited by Chartered or Incorporated Accountants. The duties of auditors of Companies of such magnitude as that of the South African Association are very onerous, and of such great importance that it is very desirous that only persons who are thoroughly competent for such duties shall be eligible for the office. The present Auditors of the Association are members, and happen to hold the qualifications which it is desired to introduce in the Bill.

Clause 46.—Is similar to 46 of the existing Act, with the exception that it provides for the appointment of Officers and employees for the management of the Port Elizabeth Agency. See Clause 46 of the existing Act.

Clause 49.—Abolishes the distinction between members and shareholders, as more fully set forth in the reference hereto in the remarks on the Preamble of the Proposed Bill. See Clause 19 of the existing Act.

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Clause 54 stipulates how notices to shareholders are to be given.

Clause 55 provides for the amalgamation with or purchase of any business of a like nature to that of the Association, more fully referred to in the remarks on the Preamble of the Bill.

All other Clauses not above referred to contain only structural alterations or amendments of little or no importance; and all the powers asked for in the proposed Bill are either already possessed or what would be permissible under the Companies' Act of 1892 by merely framing or amending Articles of Association.

91. *Chairman.*] Have you any shareholders who are not members. —No.

92. You have admitted them all as members?—Yes.

93. And you want to take away an anomaly from the Act?—Yes.

94. *Mr. Standen* (through the Chairman).] The question was raised, Mr. Centlivres, whether we ought not to come under the Companies' Act. Well, I suppose it has been considered by the Directors? —Yes, and we did not see why we should be forced.

95. I take it that the feeling of the Board, and I know of the meetings, being one of the members of the Association, that we prefer to be under an Act because we feel it to be a protection to the public?—Yes.

96. *Mr. Walker* (through the Chairman).] I will deal first with the matter of auditorship. Who was it that suggested to you the insertion of the words "incorporated or chartered"?—I think that is privileged. It was at a private meeting, not a public one. It was suggested, and I can explain my position in the matter.

97. Was it suggested to you by an accountant?—By a shareholder.

98. Was he an accountant practising in Cape Town?—I wish the Committee to protect me.

99. Will you be favourable to altering *Clause 45* to this extent: "The shareholders assembled at

the general meeting to be held in the month of April in each year shall elect two competent persons, not being Directors, to serve as auditors for the ensuing year," striking out the following words: "provided, however, that no person shall be eligible to be elected an auditor who is not either an incorporated or chartered accountant"—I have no objection; I have excluded myself by this, and I have been an accountant of the Association. We will agree to that, but, of course, it will be for the shareholders to say whether a man is competent or not.

100. *Chairman.*] I take it that the agent who appears for the promoters of the Bill and the agent of those who oppose the Bill will agree to this?—*Mr. Walker.*] Yes, I agree to this.

101. *Mr. Haarhoff.*] I notice that the petition put in stated that you propose to purchase your own shares?—*Witness.*] We have that power now.

102. Is it not illegal?—No, it is under Act of Parliament. We have the power now; we have only one share.

103. Are you limited or unlimited, or are your shares fully paid-up?—Yes, fully paid-up.

104. If that is so, why do you restrict an executor, or other legal representative, to three months? I can understand you putting down three months as the time for the share to be taken up by a new shareholder, but it will lead to great hardship in some cases?—We have to protect not only our shareholders, but the general public. Our funds are very large, and if a shareholder whose position was formerly good becomes insolvent, or he dies, it is our duty to get a substitute in his place as soon as possible. I do not think that the Committee should ask us to extend the period.

105. What it amounts to is this, that although you are fully paid-up, it is in respect to the liability of your clients that you want this?—Yes.

106. *Mr. Foster.*] It has occurred to me that it is laid down in the schedule what is the tariff of charges. Is it not inconsistent with our law altogether, because I understand that the Master of the

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June 21, 1906. Supreme Court fixes the fees of the executors. He allows, first of all, 5 per cent. and then $2\frac{1}{2}$ per cent. Your tariff would allow you to charge 5 per cent. all round, and the Master could say nothing to it?—But we do not. We have that under the existing Act. It is not a hard and fast rule, because the section says we shall be entitled to charge this unless other arrangements are made.

107. *Chairman.*] If anything was offered to you you would consider it?—Yes.

Mr. Wentzel Tichy, examined.

Mr. W. Tichy.
—
June 21, 1906. 108. *Chairman.*] You are acting secretary of the South African Association?—Yes.

109. *Mr. Standen* (through the *Chairman*).] Will you please put in copies of the minutes of the several meetings held?—Yes. [*Documents put in.*]

110. You are also a member of the Association?—Yes.

111. And you attended the meetings of the Association?—Yes.

112. *Chairman.*] These are the minutes of the meetings?—Yes, they are certified by myself.

APPENDIX.

[A.]

PETITION FOR THE BILL.

To the Honourable the Speaker and the Members of the House of Assembly of the Colony of the Cape of Good Hope in Parliament assembled.

The Petition of the Honourable Alfred Ebdon, the President of the Board of Directors, and as such representing, and duly authorized by resolution of Shareholders of, the South African Association for the Administration and Settlement of Estates.

RESPECTFULLY SHEWETH :—

1. That during the month of February, 1906, the South African Association for the Administration and Settlement of Estates caused public notice to be duly given of their intention to apply for leave to introduce, and to promote before this Honourable House, the Bill referred to in this Petition.

2. That in compliance with the rules of this Honourable House the said notice, setting forth the general objects of the Bill, was duly published in the *Government Gazette* on the 9th, 13th, 20th, and 27th days of February, 1906, and likewise in the "South African News" on the 9th, 14th, 23rd, and 26th days of February, 1906; that is to say, in the case of each of the foregoing publications, once a week for four consecutive weeks.

3. That copies of the said Bill were duly deposited with the Clerk of this Honourable House on or before the 28th day of February, 1906.

4. That the general objects of the said Bill are :—To repeal "The South African Association Incorporation Act, 1888," being an Act to repeal Act No. 17, 1875, and to re-enact such of the provisions of the first-named Act as it may be fitting to re-enact, with the following additions and alterations amongst others, that is to say :—

- (1) To empower the said Association to be styled "The South African Association," to carry on business in any British Colony, Possession, or Territory in

South Africa, and to carry on and maintain an Agency at Port Elizabeth in this Colony, and to make provisions for the appointment at such place of a local Committee or a local Agent or Agents or both such Committee and Agents, with delegated powers; and to regulate the signing and counter-signing of cheques or drafts drawn against the funds of the said Agency.

- (2) To empower the said Association to amalgamate with any other Corporation, Association, or Trust Company doing business of a like nature with that carried on by the Association, or to take over or acquire the business of such Corporation, Association, or Trust Company.
- (3) To abolish the distinction heretofore existing between Members and Shareholders, and to include both Members and Shareholders under the general designation of Shareholders—such Shareholders to be in place of both Members and Shareholders, as heretofore existing, and to participate without distinction and in proportion to their shares in any profits from time to time available for distribution.
- (4) To empower the directors to fix the rate of interest on moneys administered by or entrusted to the Association; to authorize the receiving of moneys by the Association on deposit; and to give more extended powers with respect to the investments of moneys.
- (5) To regulate the transfer of Shares and the manner of disposing of the Shares of Shareholders who die or become insolvent or make assignment to or composition with creditors.
- (6) To regulate the nomination and qualification of auditors and to make provision for the appointment of a General Manager, Secretaries, local Committee and Agents and other officers and employees.
- (7) To make provision for the first directors at the taking effect of the proposed Act, and for the retirement and the disqualification of Directors.
- (8) To regulate the times of meeting of directors and of Shareholders and to provide for the manner of serving notices on Shareholders.
- (9) To provide for a common seal and generally to make provision for efficiently carrying on the business of the said Association:

All of which will more fully appear from the printed copy of the proposed Bill annexed to this Petition in terms of the Rules of this Honourable House.

Wherefore your Petitioner humbly prays that leave may be granted to him in his aforesaid capacity to introduce the said Bill into this Honourable House.

And your Petitioner as in duty bound will ever pray.

For the South African Association for the Administration and Settlement of Estates.

ALFRED EBDEN,
President of the Board of Directors.

H. T. STANDEN,
Parliamentary Agent.

[B.]

PETITION FROM JOHN ANDREW, JOHN BOLLAND
WHEELWRIGHT, AND BERNARD JAMES KEANE,
IN OPPOSITION TO THE BILL.

To the Honourable the Speaker and Members of the House of
Assembly of the Cape of Good Hope in Parliament
assembled.

The Petition of John Andrew, John Bolland Wheelwright,
and Bernard James Keane, of Cape Town.

RESPECTFULLY SHEWETH:—

1. That your Petitioners are Public Accountants and Auditors carrying on business in Cape Town in the Cape Colony and approach your Honourable House not only for themselves but as the mouthpiece of from two hundred to three hundred Accountants practising in the Cape Colony.

2. That a business concern in Cape Town known as the South African Association for the Administration and Settlement of Estates has introduced into your Honourable House a Bill “to repeal Act 27 of 1888 entitled ‘The South African Association Incorporation Act, 1888,’ and to substitute another Act in lieu thereof.”

3. That the said Bill contains clauses which if they became law will not only confer on the said concern powers which as an ordinary business venture it should not possess, but will in certain respects clothe the said concern with the unfair advantages of a monopoly to the great detriment of your Petitioners and others the general body of Accountants in the Cape Colony.

4. That your petitioners would respectfully represent (a) that in view of the provisions of "The Companies Act, 1892," it is neither necessary nor desirable that a venture run for the benefit of private shareholders should secure a charter in the shape of the Bill in question; (b) that the matters of the extension of its business by amalgamation, the territories within which it may carry on its business, and the establishing by it of an agency at Port Elizabeth are not concerns with which your Honourable House should be asked to concern itself; and (c) that it would be highly undesirable that the powers sought in the matters of the rates of interest to be paid by the said concern to its creditors, and the investment of trust funds should be conferred.

5. That your Petitioners and others, the general body of Accountants in the Cape Colony all carry on to a greater or less extent the business of the said concern, and compete with it for business, and are therefore deeply concerned in any attempt tending to place a monopoly of trust estate and general agency in the hands of one concern.

6. That under the said Bill—should it become law—there will be conferred on the said concern (a) the exclusive power to invest trust moneys in its own funds and without giving special security; (b) the exclusive power to invest such monies in—*inter alia*—the purchase of immovable property, life policies or other securities; (c) the exclusive power to advance such moneys against pledges of promissory notes secured by shares, and to lend the same to joint stock companies or societies; (d) the exclusive power to relinquish and throw upon the Master of the Supreme Court burdensome estates; and (e) the exclusive power, acting in a trust capacity, to take over to itself the mortgages or other securities of which an estate may be composed.

7. That these and sundry other of the provisions of the said proposed measure will if they become law place your Petitioners and others the general body of Accountants in the Cape Colony at a great disadvantage and will operate to their great detriment.

8. That there are by the law of this Colony no incorporated bodies of Accountants, although such exist in the United Kingdom of Great Britain and Ireland.

9. That your Petitioner the said John Andrew is a member of the Incorporated Institute of Certified Public Accountants, England, and that your Petitioner the said John Bolland Wheelwright, is a member of the Corporation of Accountants, Glasgow—Associations of high repute.

10. That among other associations of Accountants in the United Kingdom might be named The Institute of Chartered Accountants (incorporated by Royal Charter in 1880), the Society of Accountants and Auditors and the Corporation of Accountants.

11. That in the Cape Colony membership in one or other of these English Societies is not legally recognized as conferring on the member thereof any status superior to that of those not being units of such societies, and that the same is the case in the United Kingdom.

12. That by section 45 of the proposed measure no person is to be eligible to be elected an Auditor of the said concern who is not either an incorporated or chartered Accountant, and that your Petitioners have learned that by the terms "incorporated or chartered Accountant" as used in the said section are alone meant members of the said Society of Accountants and Auditors and the said Institute of Chartered Accountants.

13. That while your Petitioners cannot object to the shareholders of the said concern electing their own Auditor or Auditors, they do most humbly but strongly object to a clause becoming law which shall confer a special privilege or status on the one or two persons in the Cape Colony who have succeeded in getting themselves admitted to the membership of one or other of said last-named English Societies.

14. That the section whereto objection is thus urged, would if law, invest said one or two persons with statutory recognition, would interfere with the present privileges of your Petitioners, and would moreover deprive the shareholders of the said concern of the advantage of the presently existing wide and efficient field whereout to select independent Auditors.

15. That other objectionable powers sought to be obtained by the said measure are: The power to enter into contracts of all descriptions, the power to invest trust funds outside the jurisdiction of the Supreme Court of this Colony, the power to draw a commission for guaranteeing the safety of investments made by it; the power to purchase its own shares; and the power to charge a commission in some instances higher than at present allowed by law to your Petitioners and others for the like class of work.

16. That ample provision already exists by the law of this Colony for the remuneration of Trustees, Executors and other like persons.

17. That the power to amalgamate sought in the said Bill is manifestly intended to bring about a union of the different trust and agency companies and the formation of a large combination partaking of the nature of a monopoly.

18. That in so approaching Your Honourable House your Petitioners hold the express mandate of those engaged in the accounting profession in Port Elizabeth and the Cape Town Committee of Public Accountants.

Wherefore your Petitioners humbly pray that Your Honourable House may be pleased to take these their repre-

We certify that the above is a true and correct extract from the General Meeting Minute Book of the South African Association.

Cape Town, 12th June, 1906.

W. TICHY, Acting Secretary.

ALFRED EBDEN, President

The South African Association.

Copy of Minutes of adjourned Emergency Meeting of Shareholders, held on Monday, the 5th February, 1906.

Present: H. M. Arderne, H. R. Arderne, R. W. C. T. Ber-range, W. M. Bisset, J. F. Bates, Alex. Bell, Wm. Corder, P. J. van Coller, G. C. Chase, F. J. Centlivres, D. Cloete, Jas. Dell, Hon. A. Ebden, G. M. Findlay, Rev. D. P. Faure, C. Gordon, P. C. Grant, A. Goldman, Mrs. S. N. Hazell, J. Jenkinson, C. F. F. Juritz, S. Jackson, J. C. de Korte, W. Kerr, S. Lomnitz, Mrs. M. A. S. Louw, Dr. F. Murray, Dr. J. H. Mearns, J. B. Munnik, P. K. Masker, F. St. M. Myburg, F. R. Moldenhauer, R. M. Maxwell, H. P. Moller, G. C. Mann, A. J. Parker, T. Rhodes, D. Stephen, H. T. Standen, Mrs. Smuts, Dr. C. P. Smuts, C. N. Thomas, W. Tichy, M. Versfield, P. G. Wege, J. W. Wright, J. R. Whitton, C. E. Pillans. F. J. B. Langerman left early.

Mr. G. M. Findlay, on behalf of the Special Committee appointed at the previous meeting, reports that the Committee had fully discussed the proposed alterations and additions to the Act with the Directors, and found the principal changes asked for in the existing Act, briefly summarised, were:

1. Establishment of Branches and Agencies.
2. Empowering the Directors to accept moneys on either fixed or floating deposit.
3. Abolition of distinction between Members and Shareholder.
4. Empowering the Directors to fix the rate of interest on Trust Funds under administration of the Institution.
5. Providing for one-fifth of the annual profits being added to Reserve Fund, so long as Reserve Fund shall be less than £100,000.
6. Providing for the nomination of Auditors fourteen days before election, and that no person shall be eligible as Auditor, unless he is either an Incorporated or Chartered Accountant.

7. Power to amalgamate with a Company or Companies carrying on similar business.

The Committee saw no objection to the alterations, with the exception of the proposal to establish Branches and Agencies. They were of opinion that this was a matter that required full consideration, and they preferred that it be dealt with by the shareholders themselves.

Mr. Centlivres spoke in support of the alteration, and replied to the objection put forward regarding the establishment of Branches.

The President stated that he adhered to the position he previously took up, and he was opposed to power being granted the shareholders to extend the business outside of its present limits. He would, however, support a proposal for the establishment of Agencies, as he considered there was a wide difference between a Branch and an Agency: the powers of the latter, to his mind, being greatly restricted.

Mr. Findlay stated he held an open mind with regard to the proposal, but he could not agree with the distinction drawn by the President between a Branch and an Agency. He held that the power and scope of the two establishments were identical.

After discussion it was proposed by Mr. David Stephen and seconded by Mr. Sidney Jackson, that further consideration of the suggested alterations to the existing Act be postponed for twelve months.

The resolution, however, was withdrawn with the approval of the meeting.

It was thereupon resolved that the proposed alterations and additions as suggested by Mr. Findlay, be taken *seriatim*.

The proposal to give the Directors power to incorporate in the new Bill, the right, subject to sanction of the shareholders, to establish Branches and Agencies, was put to the meeting and declared lost.

The remainder of the proposals was agreed to.

Mr. Standen moves, and Mr. Corder seconds, that provision be made in the Bill for the conduct of the Branch established at Port Elizabeth.

This was unanimously agreed to.

The President stated that when printed, the new Bill would be circulated amongst the members.

Read and Confirmed.

(Sgd.) ALFRED EBDEN,

President.

Cape Town, 30th April, 1906.

We certify that the above is a true and correct extract from the General Meeting Minute Book of the South African Association.

Cape Town, 12th June, 1906.

W. TICHY, Acting Secretary.

President.

The South African Association.

Extract from Minutes of General Meeting of Members, held on Monday, the 30th April, 1906.

Present: Fifty members.

“The President stated the Directors had under consideration “the question of approaching shareholders for authority to “incorporate in the new Bill, the power to acquire premises “at Port Elizabeth for the proper conduct of our Branch “there, and if necessary a special meeting of members would “be convened to consider the proposal.”

“Mr. Findlay suggested that a special meeting of shareholders be convened to consider generally the provisions of “the new Bill, and make such further verbal additions and “amendments thereto, as may be deemed advisable.”

“The President promised that the suggestion would receive “attention of the Directors.”

We certify that the above is a true and correct extract from the General Meeting Minute Book of the South African Association.

Cape Town, 12th June, 1906.

W. TICHY, Acting Secretary.

ALFRED EBDEN, President.

The South African Association.

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